

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

)
Zoya Company, et al.) Case No. 1:13-cv-780
)
Plaintiffs,)
) Judge Donald C. Nugent
vs.)
)
NIOS, Inc.,) **Report Of Parties' Planning
Meeting Under Fed. R. Civ.
P. 26(f) and LR 16.3(b)**
Defendant.)
)

1. Pursuant to Fed. R. Civ. P. 26(f) and LR 16.3(b), a meeting was held on July 3, 2013, and was attended by:

Matthew J. Cavanagh counsel for plaintiffs Zoya Company and Art of Beauty Company, Inc.; and

Heidi L. Pliam counsel for defendant Nios, Inc. appearing at said meeting and in this Report under objection for lack of personal jurisdiction and improper venue.

2. The parties exchanged the pre-discovery disclosures required by Fed. R. Civ. P. 26(a)(1) and the Court's prior order on July 15, 2013.

3. The parties recommend the following track: Standard.

4. The parties' positions with regard to ADR:

Zoya does not believe formal ADR would be helpful at this time, but is open to having informal settlement discussions.

Nios believes fast-track, binding arbitration would be helpful if the parties could agree on an arbitrator with trademark expertise, however, Nios does not believe other ADR would be helpful at this time.

5. The parties do not consent to the jurisdiction of the United States Magistrate Judge pursuant to 28 U.S.C. § 636(c).

6. Recommended Discovery Plan:

(a) Describe the subjects on which discovery is to be sought and the nature and extent of discovery.

- Zoya presently expects to submit written discovery requests (e.g., requests for production of documents, interrogatories, and requests for admissions) and to conduct 1-3 depositions, although additional depositions may be deemed necessary as discovery proceeds. Zoya also may conduct, to the extent necessary, third-party discovery by way of subpoena. Zoya likely will seek discovery on subjects relevant to this case including, but not limited to: NIOS's choice and use of the "NOYA" name for lip balm; marketplace confusion; NIOS's advertisements, sales, customers, and communications with potential customers and with others; Zoya's damages; and the market's perception of the ZOYA trademark and business. This

summary of anticipated discovery is just a summary and is not meant to limit the scope, nature, and extent of discovery that Zoya may seek.

• Nios will pursue discovery regarding, without limitation, the marketing channels used by Plaintiffs for sale of ZOYA brand products, the nature and extent the ZOYA trademark co-exists with similar third-party trademarks, and Plaintiffs' knowledge and acquiescence of the same. As such, Nios presently plans to request the production of documents, interrogatories, and requests for admissions, to conduct 1-2 depositions, and to seek third-party subpoenas to determine the nature and extent of Plaintiffs' ZOYA trademark co-exists with similar third-party marks.

The nature, extent, and subjects of discovery, as listed above, are preliminary only. As such, the scope of discovery may change as the case and discovery proceed. The parties will abide by the Federal Rules of Civil Procedure and any applicable Local Rule with respect to limitations on discovery.

(b) Discovery cut-off date: January 10, 2014.

7. Recommended dispositive motion date: February 7, 2014.

8. Recommended cut-off date for amending the pleadings and/or adding additional parties: August 2, 2014.

9. Recommended date for a Status Hearing: October 3, 2014.

10. Other matters for the attention of the Court: Because the parties anticipate that confidential and competitively-sensitive information will be exchanged in discovery, the parties likely will attempt to negotiate a stipulated protective order.

Dated: July 19, 2013

s/ Matthew J. Cavanagh
David B. Cupar (OH 0071622)
Matthew J. Cavanagh (OH 0079522)
McDONALD HOPKINS LLC
600 Superior Avenue, East, Ste. 2100
Cleveland, Ohio 44114
t 216.348.5400 | f 216.348.5474
dcupar@mcdonaldhopkins.com
mcavanagh@mcdonaldhopkins.com

Counsel for Plaintiffs

Respectfully submitted,

s/ Heidi L. Pliam
Heidi L. Pliam (PHV Rct# 14660060802)
INGENALAW PROFESSIONAL CORP.
222 9th Street South, Suite 1600
Minneapolis, MN 55402
t (612)781-4426
heidip@ingenalaw.com

Counsel for Defendant

Certificate Of Service

I hereby certify that on July 19, 2013, a copy of the foregoing ***Report Of Parties' Planning Meeting Under Fed. R. Civ. P. 26(f) and LR 16.3(b)*** was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt, and parties may access this filing through the Court's system.

s/ Matthew J. Cavanagh
Counsel for Plaintiffs